



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 29, 1994

Ms. Myra C. Schexnayder
Assistant School Attorney
Houston Independent School District
Hattie Mae White Administration Building
3830 Richmond Avenue
Houston, Texas 77027-5838

OR94-780

Dear Ms. Schexnayder:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28551.

The Houston Independent School District (the "school district") received a request for a copy of the complaint filed against the requestor concerning the administration of the March Texas Assessment of Academic Skills examination. You claim the information is excepted from required public disclosure under the "informer's privilege" as incorporated by section 552.101 of the Government Code.

Texas courts long have recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Open Records Act, Open Records Decision No. 549 (1990) at 4. For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 515 (1988) at 2-5; 391 (1983). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

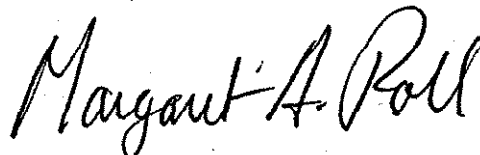
What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.]

The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

Although the "informer's privilege" aspect of section 552.101 ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty to enforce particular laws. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 285 at 1, 279 at 1-2 (1981); *see also* Open Records Decision No. 208 (1978) at 1-2. This duty may be the duty to enforce quasi-criminal civil laws. *See* Open Records Decision Nos. 515 (1988) at 3; 391 (1983) at 3. The privilege excepts the informer's statement itself only to the extent necessary to protect the informer's identity. Open Records Decision No. 549 (1990) at 5. However, once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. Open Records Decision No. 202 (1978) at 2.

The school district states that "[t]est security and integrity are governed by various provisions of the Texas Administrative Code" and that "the Commissioner of Education may suspend or cancel the teaching certificate of a person who engages in" prohibited conduct. The informer's privilege does not protect written statements complaining of a public employee's work performance when those statements do not reveal a crime or the violation of specific laws. Open Records Decision No. 515. We do not believe that the violation of an administrative rule that carries only administrative remedies constitutes a violation of a civil or criminal statute. Accordingly, you may not withhold the requested information under the informer's privilege as incorporated by section 552.101 of the Government Code. As you raise no other exceptions to required public disclosure, the requested information must be released in its entirety. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Margaret A. Roll". The signature is written in a cursive, flowing style.

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/LBC/rho

Ref.: ID# 28551

Enclosures: Submitted documents

cc: Ms. Patsy Finch
5130 Jason
Houston, Texas 77096
(w/o enclosures)